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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836.870	04/17/2001	Claude Jarkae Jensen	10209.166	5882

21999 7590 03/25/2003
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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 03/25/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/836,870	Applicant(s) JENSEN ET AL.	
	Examiner Gina C. Yu	Art Unit 1617	

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Receipt is acknowledged of Amendment filed on December 12, 2002. Claims 1, 2, and 4-28 are pending. Claim rejections under 35 U.S.C. § 112, first and second paragraphs as indicated in the previous Office action dated November 20, 2002 are withdrawn in view of claim amendments. Claim rejections under 35 U.S.C. § 102 is withdrawn in view of claim amendments. Claim rejections under 35 U.S.C. § 103 are modified to meet the claim amendments. New rejections are made in view of the claim amendment.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "a quantity of Proxeronase present in said fruit juice" and the term "a quantity of Proxeronase present in said skin" are vague and indefinite. Applicants do not define what these quantities are, and those skilled in the art would not readily be able to ascertain the metes and bounds of the scope of the claim.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

1. Claims 1, 2, and 4-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Nonidrink.com advertisement (www.nonidrink.com/skin_care.html), "Tahitian noni juice information about noni juice", copyrighted 1998-1999) in view of Duffy et al. (US 5472699) ("Duffy") and Moniz (US 52288491).

Nonidrink.com indicates that Tahitian Noni skin care system, "like all of Morinda's products it has been developed around . . . Tahitian Noni juice." See www.nonidrink.com/skin_care.html, "Tahitian noni juice information noni juice", copyrighted 1998-1999. While there is no explicit mention that the disclosed products are used as a "toner", examiner views that the recited term "toner" in the instant claim indicates an intended use or purposes and not a structure limitation of the claimed method.

While the Nonidrink.com advertisement fails to disclose the weight amount of noni juice present in the Tahitian noni cosmetic products, differences in concentration in general will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical. See MPEP § 2144.05. Given the teaching that Tahitian noni juice is added to cosmetic compositions examiner views that one having ordinary skill in the art would have discovered the optimum or workable ranges by routine experimentation. It would have been obvious to the skilled worker that varying the concentration would depend on factors such as enhancing the effects of noni juice or cost efficiency. See instant claims 4-18, 25, and 26.

The Nonidrink.com advertisement fails to disclose the additional ingredients recited in instant claims 18-28.

Art Unit: 1617

Duffy teaches a cosmetic composition comprising botanical astringent comprising extracts from Witch Hazel, Linden which is a source of vitamin C, E, and farnesol, and St. John's Wort which is a source of vitamin A. Employing silica, water, ethyl alcohol (denatured alcohol), glycerin, pyridoxine HCL, fragrances, thickeners, preservatives, and colorants are also disclosed. See the formula on col. 6, lines 35 – 45 for instant claim 18. The Duffy patent teaches that the invention helps reduce the size of pore of the skin and control sebum secretion.

The combined reference fail to teach Xeronine, Proxeronine and Proxeronase.

Moniz teaches that the presence of Proxeronine and Proxeronase in the composition is inherent. See col. 3, lines 1-18.

Given the general teaching of making cosmetic compositions from noni fruit juice in the combined references, one of ordinary skill in the art at the time the invention would have been motivated to looked to prior arts such as Duffy for specific additive components suitable for botanical astringents and combined the ingredients because of the expectation of successfully producing a noni juice skin care composition that improves skin appearance by reducing the pore size and controlling oil secretion. The activity of Proxeronine and Proxeronase in using the composition containing noni fruit juice composition in view of Moniz would have been obvious to the skilled artisan.

Response to Arguments

Applicant's arguments with respect to claims 1,2, and 4-28 have been considered but are not persuasive.

Applicants assert that the Nonidrink.com advertisement is not a valid reference. The advertisement was retrieved on October 9, 2002, and shows that its copyrighted date is 1998-1999. Applicants' argument that the specific advertisement of the noni juice skin care products were later added is not supported by clear and convincing evidence. Applicants' remark that the skin care products indicated in the New Straights Times reference is a different composition from the claimed invention also lacks support.

Applicants also argue that Moniz teaches away from using noni juice for topical use. Examiner views that the claimed effect of instant claim 2 must be also present in compositions containing noni fruit juice. In response to applicants' argument that the reference teaches away from topical use, examiner notes that topical use of noni fruits for medical purposes have been well known for in the art. See Moniz, col. 1, line 51-col. 2, line 68.

Conclusion

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

Art Unit: 1617

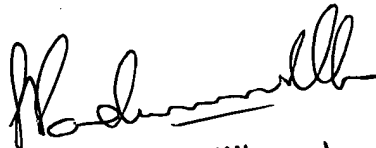
mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 703-305-1877. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
March 24, 2003


SREENI PADMANABHAN
PRIMARY EXAMINER 3/24/03